

By the Committees on Fiscal Policy; and Governmental Oversight and Accountability; and Senator Boyd

594-03814-23

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1                   A bill to be entitled  
2       An act relating to contract liability; amending s.  
3       287.058, F.S.; requiring that certain procurement  
4       agreements include a specified provision; reenacting  
5       ss. 287.0571(5) and 1002.84(13), F.S., relating to  
6       contract requirements for proposed outsourcing and  
7       procurement contract requirements for early learning  
8       coalitions, respectively, to incorporate the amendment  
9       made to s. 287.058, F.S., in references thereto;  
10      providing an effective date.

11  
12 Be It Enacted by the Legislature of the State of Florida:

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14       Section 1. Subsection (8) is added to section 287.058,  
15 Florida Statutes, to read:

16       287.058 Contract document.—

17       (8) In addition to any other provision required to be  
18 included, the written agreement for a procurement of contractual  
19 services in excess of the threshold amount provided in s.  
20 287.017 for CATEGORY TWO must include the following limitation  
21 of liability provision for breach of contract:

22  
23       For all claims against the Contractor under any  
24 contract or purchase order, and regardless of the  
25 basis on which the claim is made, the Contractor's  
26 liability for direct damages under a contract or  
27 purchase order shall be limited to the greater of  
28 \$100,000, the dollar amount of the contract or  
29 purchase order, or two times the charges rendered by

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30 the Contractor under the purchase order. The  
31 limitation of liability contemplated herein does not  
32 apply to any claim arising under an indemnity section  
33 of the agreement or any section of the agreement  
34 relating to insurance for the provision of  
35 Professional Services as defined in section 287.055,  
36 Florida Statutes, unless otherwise agreed to by the  
37 parties to the contract. Unless otherwise specifically  
38 enumerated in the contract or in the purchase order,  
39 no party shall be liable to another for special,  
40 indirect, punitive, or consequential damages,  
41 including lost data or records (unless the contract or  
42 purchase order requires the Contractor to back up data  
43 or records), even if the party has been advised that  
44 such damages are possible. No party shall be liable  
45 for lost profits, lost revenue, or lost institutional  
46 operating savings. The State and Customer may, in  
47 addition to other remedies available to them at law or  
48 equity and upon notice to the Contractor, retain such  
49 monies from amounts due the Contractor as may be  
50 necessary to satisfy any claim for damages, penalties,  
51 costs, and the like asserted by or against them. The  
52 State may set off any liability or other obligation of  
53 the Contractor or its affiliates to the State against  
54 any payments due the Contractor under any contract  
55 with the State.

56 Section 2. For the purpose of incorporating the amendment  
57 made by this act to section 287.058, Florida Statutes, in a  
58 reference thereto, subsection (5) of section 287.0571, Florida

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59 Statutes, is reenacted to read:

60 287.0571 Business case to outsource; applicability.—

61 (5) In addition to the contract requirements provided in s.  
62 287.058, each contract for a proposed outsourcing, pursuant to  
63 this section, must include, but need not be limited to, the  
64 following contractual provisions:

65 (a) A scope-of-work provision that clearly specifies each  
66 service or deliverable to be provided, including a description  
67 of each deliverable or activity that is quantifiable,  
68 measurable, and verifiable. This provision must include a clause  
69 that states if a particular service or deliverable is  
70 inadvertently omitted or not clearly specified but determined to  
71 be operationally necessary and verified to have been performed  
72 by the agency within the 12 months before the execution of the  
73 contract, such service or deliverable will be provided by the  
74 contractor through the identified contract-amendment process.

75 (b) A service-level-agreement provision describing all  
76 services to be provided under the terms of the agreement, the  
77 state agency's service requirements and performance objectives,  
78 specific responsibilities of the state agency and the  
79 contractor, and the process for amending any portion of the  
80 service-level agreement. Each service-level agreement must  
81 contain an exclusivity clause that allows the state agency to  
82 retain the right to perform the service or activity, directly or  
83 with another contractor, if service levels are not being  
84 achieved.

85 (c) A provision that identifies all associated costs,  
86 specific payment terms, and payment schedules, including  
87 provisions governing incentives and financial disincentives and

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88 criteria governing payment.

89 (d) A provision that identifies a clear and specific  
90 transition plan that will be implemented in order to complete  
91 all required activities needed to transfer the service or  
92 activity from the state agency to the contractor and operate the  
93 service or activity successfully.

94 (e) A performance-standards provision that identifies all  
95 required performance standards, which must include, at a  
96 minimum:

97 1. Detailed and measurable acceptance criteria for each  
98 deliverable and service to be provided to the state agency under  
99 the terms of the contract which document the required  
100 performance level.

101 2. A method for monitoring and reporting progress in  
102 achieving specified performance standards and levels.

103 3. The sanctions or disincentives that shall be imposed for  
104 nonperformance by the contractor or state agency.

105 (f) A provision that requires the contractor and its  
106 subcontractors to maintain adequate accounting records that  
107 comply with all applicable federal and state laws and generally  
108 accepted accounting principles.

109 (g) A provision that authorizes the state agency to have  
110 access to and to audit all records related to the contract and  
111 subcontracts, or any responsibilities or functions under the  
112 contract and subcontracts, for purposes of legislative  
113 oversight, and a requirement for audits by a service  
114 organization in accordance with professional auditing standards,  
115 if appropriate.

116 (h) A provision that requires the contractor to interview

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117 and consider for employment with the contractor each displaced  
118 state employee who is interested in such employment.

119 (i) A contingency-plan provision that describes the  
120 mechanism for continuing the operation of the service or  
121 activity, including transferring the service or activity back to  
122 the state agency or successor contractor if the contractor fails  
123 to perform and comply with the performance standards and levels  
124 of the contract and the contract is terminated.

125 (j) A provision that requires the contractor and its  
126 subcontractors to comply with public records laws, specifically  
127 to:

128 1. Keep and maintain the public records that ordinarily and  
129 necessarily would be required by the state agency in order to  
130 perform the service or activity.

131 2. Provide the public with access to such public records on  
132 the same terms and conditions that the state agency would  
133 provide the records and at a cost that does not exceed that  
134 provided in chapter 119 or as otherwise provided by law.

135 3. Ensure that records that are exempt or records that are  
136 confidential and exempt are not disclosed except as authorized  
137 by law.

138 4. Meet all requirements for retaining records and transfer  
139 to the state agency, at no cost, all public records in  
140 possession of the contractor upon termination of the contract  
141 and destroy any duplicate public records that are exempt or  
142 confidential and exempt. All records stored electronically must  
143 be provided to the state agency in a format that is compatible  
144 with the information technology systems of the state agency.

145 (k)1. A provision that provides that any copyrightable or

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146 patentable intellectual property produced as a result of work or  
147 services performed under the contract, or in any way connected  
148 with the contract, shall be the property of the state, with only  
149 such exceptions as are clearly expressed and reasonably valued  
150 in the contract.

151 2. A provision that provides that, if the primary purpose  
152 of the contract is the creation of intellectual property, the  
153 state shall retain an unencumbered right to use such property.

154 (1) If applicable, a provision that allows the agency to  
155 purchase from the contractor, at its depreciated value, assets  
156 used by the contractor in the performance of the contract. If  
157 assets have not depreciated, the agency shall retain the right  
158 to negotiate to purchase at an agreed-upon cost.

159 Section 3. For the purpose of incorporating the amendment  
160 made by this act to section 287.058, Florida Statutes, in a  
161 reference thereto, subsection (13) of section 1002.84, Florida  
162 Statutes, is reenacted to read:

163 1002.84 Early learning coalitions; school readiness powers  
164 and duties.—Each early learning coalition shall:

165 (13) Comply with federal procurement requirements and the  
166 procurement requirements of ss. 215.971, 287.057, and 287.058,  
167 except that an early learning coalition is not required to  
168 competitively procure direct services for school readiness  
169 program and Voluntary Prekindergarten Education Program  
170 providers.

171 Section 4. This act shall take effect July 1, 2023.